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3 **UNITED STATES DISTRICT COURT**  
4 **DISTRICT OF NEVADA**

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6 UNITED STATES OF AMERICA,

7 Plaintiff,

8 v.

9 CHRISTOPHER HARRY GOODING,

10 Defendant.  
11

Case No. 2:16-cr-00136-APG-CWH

**ORDER**

12 Presently before the court is defendant Christopher Harry Gooding's motion to appear in  
13 court for notice of charges (ECF No. 9), filed on March 28, 2019. The government filed a  
14 response (ECF No. 11) on April 11, 2019. Defendant did not file a reply.

15 On March 24, 2014, Gooding was sentenced in Southern District of California to 46  
16 months and three years of supervised release for importing methamphetamine in violation of 21  
17 U.S.C. §§ 952, 960. (Transfer of Jurisdiction (ECF No. 4).) On May 5, 2016, this court accepted  
18 the transfer of jurisdiction for Gooding's supervised release, which permitted his supervised  
19 release sentence to be served in the District of Nevada. (Order Accepting Jurisdiction (ECF No.  
20 2).) According to the terms of Gooding's supervised release, Gooding was to refrain from  
21 committing another federal, state, or local crime. (*See* Transfer of Jurisdiction (ECF No. 4).)

22 In January of 2017, while serving his supervised release term, Gooding committed new  
23 state crimes. (*See* Resp. (ECF No. 11); *see also* Sealed 12C Petition (ECF No. 5).) Gooding then  
24 pleaded guilty to those crimes and the Nevada state court sentenced Gooding to "concurrent terms  
25 of custody of 60 to 180 months on the first count and 24 to 60 months on the second count[.]" to  
26 be served concurrently with the California sentence. (Resp. (ECF No. 11) at 2.) By the time  
27 Gooding was in custody on the state charges, he had completed the custodial portion of his  
28 sentence on the California federal criminal case.

1 Gooding now moves to appear in court for an arraignment because he was informed by a  
2 Nevada Department of Corrections Officer that there is an active warrant for his arrest. (Mot. to  
3 Appear (ECF No. 9).) Gooding raises constitutional concerns relating to his Fifth Amendment  
4 right to due process and his Sixth Amendment right to be informed of the nature and cause of the  
5 accusations against him. (*Id.*) The government responds that the motion should be denied  
6 because Gooding is effectively requesting that the state court sentence should override the federal  
7 sentencing guidelines. (Resp. (ECF No. 11).) Specifically, the government argues that when  
8 determining the sentence to be imposed in a violation of supervised release, the court shall  
9 consider the United States Sentencing Guidelines (“Sentencing Guidelines”). *See* 18 U.S.C. §  
10 3553(a)(4)(B). The Sentencing Guideline mandates that

11 any term of imprisonment imposed upon the revocation of ... supervised release  
12 shall be ordered to be served consecutively to any sentence of imprisonment that  
13 the defendant is serving, whether or not the sentence of imprisonment being  
14 served resulted from the conduct that is the basis of the revocation of ...  
15 supervised release.

16 U.S. Sentencing Guidelines Manual § 7B1.3(f).

17 Having reviewed the motion, the response, and the procedural history in this case, the  
18 court construes defendant’s motion as a request to appear in court to resolve the supervised  
19 release violations. Contrary to Gooding’s arguments, the court does not find any constitutional  
20 concerns implicated in this action. While Gooding does have a right to a prompt hearing on a  
21 supervised release revocation, that right is not triggered until Gooding is in custody on the  
22 supervised release violation. *See United States v. Gavilanes-Ocaranza*, 772 F.3d 624, 628 (9th  
23 Cir. 2014), *cert. denied*, 136 S. Ct. 225 (2015); *United States v. Santana*, 526 F.3d 1257, 1259  
24 (9th Cir. 2008); *see also* *United States v. Magana-Colin*, 359 Fed. Appx. 837, 838 (9th Cir. 2009)  
25 (the right is also not triggered when the warrant remains unexecuted), *cert. denied*, 560 U.S. 958  
26 (2010). Gooding is not currently in custody as a result of the supervised release violation.  
27 Rather, Gooding is serving a sentence for state criminal charges. Further, the government may  
28 postpone adjudication of the supervised release violation until after Gooding is released from  
state custody. *See* 18 U.S.C. § 3583 (“The power of the court to revoke a term of supervised

1 release for violation of a condition of supervised release . . . extends beyond the expiration of the  
2 term of supervised release for any period reasonably necessary for the adjudication of matters  
3 arising before its expiration if, before its expiration, a warrant or summons has been issued on the  
4 basis of an allegation of such a violation.”); *United States v. Garrett*, 253 F.3d 443, 449 (2001)  
5 (the term “reasonably necessary” includes delays resulting from a defendant’s state charges). As  
6 such, the court does not find good cause to require the government or probation to act upon the  
7 supervised release violation and warrant. Gooding’s motion is therefore denied.

8 IT IS THEREFORE ORDERED that defendant Christopher Harry Gooding’s motion to  
9 appear in court for notice of charges (ECF No. 9) is DENIED without prejudice.

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11 DATED: May 2, 2019

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15 C.W. HOFFMAN, JR.  
16 UNITED STATES MAGISTRATE JUDGE  
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